

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DONNELL KEARNEY,

Case No. 21-CV-1915 (SRN/KMM)

Petitioner,

v.

**REPORT AND
RECOMMENDATION**

UNITED STATES OF AMERICA,

Respondent.

On August 25, 2021, the Clerk of this Court sent Petitioner Donnell Kearney a letter (1) stating that the Court had not received from Mr. Kearney either this action's filing fee or an application to proceed *in forma pauperis* ("IFP"); (2) enclosing a copy of this District's template IFP application; and (3) warning Mr. Kearney that if the Court did "not receive [his] filing fee or [IFP application], [his] case could be summarily dismissed without prejudice."¹ (ECF No. 2.) It has been several weeks since the Clerk sent this letter, and Mr. Kearney has not submitted a filing fee or IFP application. (In fact, Mr. Kearney has not communicated with the Court about this case at all since commencing it.) Accordingly, this Court now recommends dismissing this action without prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute. *See, e.g., Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an

¹ The Court refers to Mr. Kearney as "Petitioner" because this action's initial filing, though hard to follow, may seek habeas relief. (*See generally* ECF No. 1.) For present purposes, even if the Court construed this lawsuit as a standard civil action rather than a habeas matter, the Court would still issue an essentially identical Report and Recommendation.

action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that this action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Date: September 21, 2021

s/ Katherine Menendez
Katherine Menendez
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).